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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, DENIS
MOLINA, JHONY SILVA, MARIA ELENA
HERNANDEZ, O.C., SANDHYA LAMA, S.K.,
TEOFILO MARTINEZ,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-05687-TLT

JOINT DISCOVERY LETTER BRIEF

Magistrate Judge Sallie Kim

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The parties submit this brief regarding outstanding discovery disputes. Lead counsel met and conferred and complied with Section 9 of the District's Guidelines for Professional Conduct.

I. FACTUAL BACKGROUND & RELEVANT DEADLINES

This case concerns a legal challenge pursuant to the Administrative Procedure Act (APA) and the Equal Protection Clause of the Constitution to Defendants' termination of Temporary Protected Status (TPS) designations of Honduras, Nepal and Nicaragua. The terminations affect more than 60,000 individuals who have resided in the United States with TPS for at least a decade. Plaintiffs allege that the decisions were preordained and deviated from TPS prior practice and history, in violation of the APA; and that they were unconstitutionally motivated by racial animus. Plaintiffs must move for summary judgment no later than October 14.

Defendants produced Certified Administrative Records (CARs) for each of the challenged decisions, withholding certain records in the CARs pursuant to the deliberative process privilege (DPP). ECF 77-1, 77-3, 78-1, 78-3, 79-1, 79-3 (supplemental CAR indices and certifications of complete CAR production); ECF 77-2, 78-2, 79-2 (USCIS Decision Memoranda withheld pursuant to DPP).

On August 21, following briefing between the parties, this Court ordered expedited extra-record discovery for Plaintiffs' APA and Equal Protection claims, compelling production of responsive documents within 14 days of: (a) this status report, to the extent that there is agreement on the RFPs, or (b) this Court's order resolving any discovery dispute. ECF 97 at 2-3, 5. This Court granted the parties an opportunity to further brief the scope of discovery and ordered the parties to file a status report concerning any disagreement. *Id.* at 4-5.¹

Plaintiffs seek records concerning the three challenged decisions (RFP 1-3) as well as records concerning other TPS periodic reviews conducted by this administration (RFP 4-5). ECF 95-1 & 95-2. The parties have narrowed the dispute regarding the scope of discovery. The parties have reached agreement regarding custodians, search terms and date ranges:

- Regarding custodians: Defendants will search the records of the custodians listed in the

¹ The Court also ordered Defendants to produce to the Court all documents withheld from the CARs pursuant to the DPP, and an accompanying privilege log. *Id.* at 5-7.

Annex to the RFPs with one modification—replacing the “Executive Secretary” to Secretary Noem for the “Executive Assistant.”

- Regarding search terms: To identify the appropriate universe of documents, Defendants will use the following search terms, as appropriate, for RFP Nos. 1-3: [“Temporary Protected Status” OR “TPS” OR “1254a”] AND [“Honduras” OR “Nepal” OR “Nicaragua”]. Should the Court order discovery for RFP Nos. 4-5, the Parties will confer on the appropriate search terms.
- Regarding date ranges: The searches will cover January 20 through the date of publication of the Federal Register notice announcing the termination for each respective country.
- The parties also agree that Defendants need only produce responsive records within the custody and control of Defendant Department of Homeland Security.

The parties have also largely reached agreement concerning RFP Nos. 1 and 2. The parties have continued disputes regarding RFP Nos. 3-5. With regard to RFP No. 3, Defendants agree to produce responsive communications concerning the challenged terminations, but dispute whether communications that reflect public or internal guidance on how to implement the decisions need to be produced. Defendants also contest the relevance of RFP Nos. 4 and 5. Additionally, Defendants contest that the last clause of RFP 5—“communications related to [] country conditions analyses” prepared in connection with all 2025 TPS periodic reviews—reads as overbroad and vague. As a compromise, Plaintiffs propose that RFP 5 be limited to a) draft and final country conditions analyses; and b) that the last clause of RFP 5 be limited to communications related to these country conditions analyses involving any of a list of limited custodians.

Finally, Defendants contest the 14-day timeline for production of responsive records.

II. PLAINTIFFS’ POSITION

A. RFP 3—Defendants Should Be Compelled to Produce All Communications Related to the Challenged Terminations That Predate the Publication of the Decisions

The parties’ limited dispute with regard to RFP 3 concerns communications that reflect public guidance and internal operational guidance on how to implement the challenged termination decisions. Plaintiffs contend that such communications are relevant and responsive and should be produced. In

1 prior decisions concerning TPS, Defendants have consulted with operational personnel in connection
 2 with the decisionmaking process. *See, e.g., NTPSA I v. Noem*, No. 3:25-cv-01766-EMC, ECF 257 at
 3 3 (in making the decision to vacate TPS for Venezuela, Defendants sought evidence related to
 4 “operational challenges”). Defendants’ public communications regarding TPS decisionmaking are
 5 also relevant to Plaintiffs’ claims. Defendants have publicly defended the agency’s TPS decisions on
 6 the grounds that the “TPS system has been exploited and abused,” ECF 17 at 10, and that they were
 7 “returning integrity to the TPS system,” and “returning TPS to its original status: temporary.” *Id.*; *see*
 8 *also* ECF 73 at 22 (considering relevant the Secretary’s statements that “TPS ‘was abused, exploited,
 9 and politicized’ and ‘an immigration scheme[] that make[s] Americans less safe’”).

10 Plaintiffs contend that the strict time limits for responsive records serve to adequately exclude
 11 any records that relate only to public guidance and implementation; in particular, any public guidance
 12 must have occurred only *after* the terminations were publicly announced. In a good faith effort to
 13 compromise, Plaintiffs nonetheless propose an earlier end date for the production of communications
 14 that reflect public and internal guidance: the date of *approval of publication* of the termination
 15 decisions in the Federal Register—May 29 for Nepal (ECF 64-1 at Nepal AR0000005); June 30 for
 16 Honduras (ECF 62-1 at HondurasAR0000005); and July 3 for Nicaragua (ECF 63-1 at NicAR0000005).

17 **B. RFP 4 & 5**

18 Plaintiffs seek limited records concerning the TPS periodic reviews conducted by this
 19 administration for countries other than Honduras, Nepal, and Nicaragua—draft and final USCIS
 20 Decision Memoranda (RFP 4) and draft and final country conditions analyses, and communications
 21 related to these country conditions analyses (RFP 5). These requests are relevant as Plaintiffs’ first
 22 APA claim challenges Defendants’ general TPS policies and practices, including “the collateral
 23 decision to end TPS for virtually every country that has it.” ECF 87 at 3; ECF 73 at 22 (describing
 24 Secretary’s “history of systematically attempting to limit TPS”). In reaching its decision that
 25 “Plaintiffs will likely succeed on the merits of their first APA claim,” this Court has already considered
 26 relevant this administration’s decisionmaking in other TPS periodic reviews. ECF 73 at 22-23 (citing
 27 this administration’s TPS decisions for Venezuela, Haiti, Afghanistan and Cameroon). This diverges
 28 from *NTPSA I* for the simple reasons that 1) the APA claim that these termination decisions were part

1 of a preordained effort to terminate TPS writ large was not present in *NTPSA I*; and 2) *NTPSA I*
 2 concerned the first two TPS decisions of this administration; there were no others at that time.

3 Plaintiffs' requests pertaining to other periodic reviews are limited. First, Plaintiffs seek draft
 4 and final USCIS Decision Memoranda regarding each periodic review of this administration (RFP 4).
 5 TPS Decision Memos are the central documents considered by the Secretary in connection with the
 6 periodic review of a TPS designation, and include detailed and substantiated recommendations from
 7 USCIS to DHS.² The earliest TPS periodic review of this administration demonstrated the importance
 8 of analyzing draft USCIS Decision Memos. USCIS personnel drafted and re-drafted the Venezuela
 9 Decision Memo to get to the desired conclusion—termination on national interest grounds. *See* ECF
 10 17 at 9-10; *NTPSA I*, ECF 257 at 7 n.4 (iterative drafts of the USCIS Decision Memo ultimately
 11 concluded that termination was warranted on the ground of national interest—something not
 12 considered at all as a basis for termination in earlier drafts).

13 Second, Plaintiffs seek country conditions analyses and related communications (RFP 5). A
 14 typical TPS periodic review process begins months before the Secretary must make a decision. USCIS
 15 Refugee, Asylum and International Operations Directorate (RAIO) prepares a country conditions
 16 report which forms the basis of the USCIS Decision Memo. The State Department also provides a
 17 country conditions analysis, which forms the basis of its recommendation. Whether and how
 18 Defendants relied on country conditions analyses in their periodic reviews is central to Plaintiffs' first
 19 APA claim that Defendants' decisions were preordained and deviated from TPS prior practice.

20 To avoid any undue burden in connection with RFP 5, Plaintiffs propose as a compromise that
 21 RFP 5 be limited to a) draft and final country conditions analyses; and b) communications related to
 22 these country conditions analyses involving any of a restricted list of custodians centrally involved in
 23 TPS decisionmaking based on their roles:

- 24 1) Rob Law, Nominee for DHS Undersecretary, Office of Strategy, Policy and Plans
- 25 2) DHS Senior Advisor and General Counsel Nominee James Percival

26 ² *See generally* U.S. Gov't Accountability Off., GAO-20-134, *Temporary Protected Status: Steps*
 27 *Taken to Inform and Communicate Secretary of Homeland Security's Decisions*, 31 (2020) ("GAO
 28 TPS Report") (providing overview of TPS review process); *Ramos v. Nielsen*, No. 18-cv-1554, ECF
 No. 128 at 4–5 (N.D. Cal. Oct. 3, 2018) (Order Granting Plaintiffs' Motion for Preliminary
 Injunction).

1 3) USCIS Director Joe Edlow

2 4) USCIS Office of Policy & Strategy (OP&S) Director Samantha Deshommes

3 5) USCIS OP&S Humanitarian Affairs Division Chief Rena Cutlip Mason

4 6) USCIS RAIO Associate Director Ted Kim

5 7) USCIS RAIO subject matter expert responsible for drafting the country conditions review
6 for the country at issue

7 8) USCIS OP&S Policy Advisor responsible for drafting the Decision Memo for the country

8 **C. No Modification of the Deadline for Production Is Warranted.**

9 The Court should not modify the 14-day deadline for production, which is appropriate in light
10 of the urgency and importance of the matters in dispute. As a result of Defendants' actions, more than
11 60,000 TPS holders who have lived in the United States lawfully for years or decades have either lost
12 their legal status already (in the case of Nepal) or face the imminent loss of status (in the case of
13 Honduras and Nicaragua). Any extension of this Court's deadline would hamper the ability of
14 Plaintiffs to review the records in advance of their October 14 filing deadline, and would limit the
15 ability of the parties and the Court to resolve anticipated discovery disputes. The discovery sought is
16 narrowly tailored and not burdensome, and regardless cannot outweigh the liberty interests and safety
17 of 60,000 people who have resided legally in this country for years or decades. Defendants have been
18 on notice of Plaintiffs' discovery requests from the dates that they were served—on August 6 and 18,
19 respectively; and also of this Court's ruling that production should be expedited from its August 21
20 order. ECF 97 ("Defendants are thus advised to prepare for prompt document production.").

21 **III. DEFENDANTS' POSITION**

22 **A. Current Deadline for Expedited Production is Unsupported by Good Cause.**

23 As a preliminary matter, Defendants seek to clarify their position regarding Plaintiffs'
24 request to shorten the deadline for the production of documents to 14 days. *See* ECF No. 95 at 5.
25 Defendants did not comment on this request in the Parties' August 19, 2025, Joint Discovery Letter,
26 ECF No. 97 at 5, because it was Defendants' position that there should be *no* extra-record discovery
27 here, expedited or otherwise. ECF No. 95 at 7. Now that this Court granted Plaintiffs' extra-record
28 discovery request, Defendants assert that expedited discovery, particularly with a 14 day turnaround,

1 is inappropriate. Plaintiffs’ “good cause” explanation, that “Defendants have both appealed and
 2 moved for a stay of the APA Section 705 interim relief ordered by this Court . . . [and, regardless of
 3 the result of the stay request,] Plaintiffs still face an imminent summary judgment deadline,” is
 4 insufficient. ECF No. 95 at 5. On August 20, 2025, the Ninth Circuit granted a stay of this Court’s
 5 postponement order. However, the fact that Plaintiffs lost an appeal of a preliminary injunction
 6 before a circuit court is not sufficient to show “good cause” here. *See Apple Inc. v. Samsung Elecs.*
 7 *Co., Ltd.*, Case No. 11-CV-01846-LHK, 2011 WL 1938154, at *2 (N.D. Cal. May 18, 2011) (“courts
 8 have found that expedited discovery may be justified to allow a plaintiff to determine *whether to*
 9 *seek* an early injunction”) (emphasis added). And the dispositive motions deadline of October 14,
 10 2025, is also distant enough that it does not justify limiting Defendants to only 14 to respond to
 11 requests for production of documents. ECF No. 91 at 1.

12 Defendants respectfully request 21 days to respond to Plaintiffs’ RFPs. The additional seven
 13 days will provide time for Defendants to thoroughly and accurately respond, reducing the chance of
 14 disputes over the production, and is still expedited under the Federal Rules of Civil Procedure. *See*
 15 Fed. R. Civ. P. 34(b)(2)(A).

16 **B. Requests 4 and 5 Exceed the Scope of Discovery.**

17 The scope of discovery should be no broader than that in *NTPSA I*. *See* ECF No. 97 at 5, 7.
 18 However, RFPs 4 and 5 reach far beyond the ordered scope and seek information neither relevant to
 19 any party’s claim or defense nor proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

20 By requesting information pertaining to “all 2025 TPS periodic reviews,” these RFPs go well
 21 beyond the ordered scope of discovery, as well as the scope of discovery in *NTPSA I*, which only
 22 concerned the TPS designations the TPS designations at issue in that case. Typically, judicial review
 23 of agency action should be based on the record before the agency at the time of the decision, barring
 24 exceptional circumstances. *Dep’t of Com. v. New York*, 588 U.S. 752, 780 (2019). While this Court
 25 concluded that this case falls within the “bad faith” exception to the general practice of prohibiting
 26 extra-record discovery in APA cases, it only determined that extra-record discovery is warranted for
 27 Plaintiffs’ APA and Equal Protection claims. ECF No. 97 at 3-4. Here, Plaintiffs have claimed that
 28 Defendants’ termination of the TPS designations for Honduras, Nepal, and Nicaragua violated the

1 APA and Due Process Clause of the Fifth Amendment. *See* ECF No. 1 ¶¶ 152-65. This Court did
 2 not, however, permit discovery into the Secretary’s determinations related to South Sudan,
 3 Afghanistan, Cameroon, Haiti, Venezuela, or Syria, let alone extra-record discovery regarding these
 4 determinations.

5 Furthermore, the RFPs regarding unrelated TPS designations where there has been a periodic
 6 review during the Secretary’s tenure are neither relevant to the decision-making process regarding
 7 Honduras, Nicaragua, and Nepal nor are these Requests “reasonably calculated to lead to the
 8 discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1); *see Herbert v. Lando*, 441 U.S. 153, 177
 9 (1979) (“The requirement of Rule 26(b)(1) that the material sought in discovery be ‘relevant’ should
 10 be firmly applied, and the district courts should not neglect their power to restrict discovery where
 11 ‘justice requires [protection for] a party or person from annoyance, embarrassment, oppression, or
 12 undue burden or expense’”). It is unclear what Plaintiffs are looking for, and it is speculative at best
 13 that a response would produce any relevant information. *See Blagman v. Apple Inc.*, Case No. CV
 14 13-8496-PSG, 2014 WL 12607841, at *2 (C.D. Cal. Jan. 6, 2014) (court will not compel discovery
 15 that is “impermissibly overboard, and if answered would produce much tangential if not irrelevant
 16 information”); *Zewdu v. Citigroup Long Term Disability Plan*, 264 F.R.D. 622, 626 (N.D. Cal. 2010)
 17 (“Discovery must be narrowly tailored . . . and must not be a fishing expedition”). While Plaintiffs
 18 allege that the Secretary’s decisions regarding Honduras, Nepal, and Nicaragua are all part of
 19 “efforts to terminate virtually all TPS designations,” ECF No. 1, ¶ 45, what the “draft and final
 20 USCIS Decision Memoranda” and “draft and final country conditions analyses . . . , and
 21 communications related to these country conditions analyses” will reveal is purely speculative and
 22 has nothing to do with Plaintiffs’ claim of deviation from prior practice, especially for country
 23 designation determinations made after the at-issue terminations. If there were any pre-ordained
 24 termination policy (which Defendants deny), and if such a policy were applied to the TPS
 25 terminations for Honduras, Nicaragua, or Nepal, then the communications regarding that policy
 26 would certainly be found in the communications relevant to the TPS terminations for Honduras,
 27 Nicaragua, or Nepal. Simply put, Plaintiffs propose an expansion of discovery far beyond the
 28 relevant records, and far beyond what has ever been authorized in these TPS termination challenges.

1 Plaintiffs demand is nothing other than a pure fishing expedition into decisions not before this court
2 and Plaintiffs proposal needlessly adds to the volume of records that must be collected, searched and
3 reviewed – thereby increasing the burden and expense of discovery far beyond that which is
4 reasonable for no identifiable benefit, in an already shortened timeframe. Fed. R. Civ. P. 26(b)(1).

5 **C. Communications Irrelevant to the Decision-Making Process Should not be Produced in**
6 **Response to RFP 3.**

7 Discovery should be limited to the decisions at issue and only require the production of non-
8 privileged documents that pre-date the decisions at issue, and that are relevant to the making of
9 those decisions. This comports with the practice in *NTPSA I*, where the Court ordered that
10 “[d]ocuments sought must be keyed to Secretary Noem’s intent in reaching the decisions challenged
11 herein beyond that already contained in the administrative record, if any.” *NTPSA I*, ECF No. 129,
12 at 8. Like *NTPSA I*, any authorized discovery should not include irrelevant guidance on how to
13 implement any decision once it is made, nor those communications relevant only to the development
14 of public affairs guidance, media statements, or responses to legislative inquiries. This is especially
15 true when such statements post-date the date the decision was made, as all post-decisional
16 communications are clearly irrelevant to the making of the decision itself. *See id.* (“it is not clear
17 why documents related to DHS press releases or guidance about how to respond to questions from
18 the media or TPS holders are relevant (especially post-decision) to any alleged unlawful motivation
19 (*i.e.* pretext, bad faith, or animus) behind the challenged decisions”); *see also NTPSA I*, ECF No.
20 135, at 3 (not requiring the government to respond to request for documents related to media
21 appearances or statements). The court in *NTPSA I* did not authorize general discovery for good
22 reason — because communications not tied to the making of the decisions are not relevant to the
23 court’s consideration of how the decisions were made (to the extent the court may consider such at
24 all). Similarly, the scope of discovery in this case should be limited to only those document
25 pertinent to the Secretary’s decision making and not simply sweep in anything and everything that
26 mentions TPS. Therefore, Defendants propose that this Court limit discovery by excluding any
27 communications relevant only to the development of internal operational guidance, as well as the
28 development of statements for the purpose of public, legislative, or media affairs.

1 Date: August 28, 2025

Respectfully submitted,

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SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that the other Signatory has concurred in the filing of this document.

Date: August 28, 2025

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean

Emilou MacLean

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

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